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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/868,264	12/14/2001	Wolfgang Ries	2345/157	8482
26646	7590	04/21/2005	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			DINH, KHANH Q	
			ART UNIT	PAPER NUMBER
			2151	

DATE MAILED: 04/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/868,264

**Applicant(s)**

RIES ET AL.

**Examiner**

Khanh Dinh

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 5-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

1. This is in response to the Amendment filed on 1/18/2005. Claims 5-8 are presented for examination.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Bencheck et al. (hereafter Bencheck), US pat. No.6,072,777.

As to claim 1, Bencheck discloses a device for controlling a telecommunications system between a plurality of networks [each network element (each network element (151-156 of fig.1) is dedicated to a specified networks as: DS1, DS3, VT-n traffic, see col.4 line 56 to col.5 line 17], each network of the plurality of networks being designed for services or parts of services (providing network services including network domains, see col. 5 lines 46-55), comprising:

At least on network management device (network element 151 fig.1)

At least one service management device (element manager 141 fig.1) and at least one domain manager (network manager 131 fig.1) (see fig.1, col.4 lines 24-55).

Wherein the at least one domain manager (131 fig.1) has access to a selected network management device (using network manager to provide services to network elements, see col.4 line 56 to col.5 line 17).

Wherein the at least one service management device is selected, and the at least one domain manager is linkable to the selected at least one service management device (implementing Network managers for setting up connections to network elements through element managers, see col.5 lines 18-34).

Wherein the at least one network management device (151 fig.1) is assigned to each network of the plurality of networks (each network element is dedicated to a specified networks as: DS1, DS#, VT-n traffic, see col.4 line 56 to col.5 line 17) network and the at least network management device being controllable by the at least one service management device (141 fig.1) (using element manager to identify the root cause of network problems, see col. 5 lines 35-67).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bencheck in view of Dahod et al. (hereafter Dahod), US pat. No.5,682,383.

As to claim 6, Bencheck's teachings still applied as in item 4 above. Bencheck does not specifically disclose using a controllable matrix to link network devices. However, Dahod discloses a controllable matrix [a reconfigurable electronic switch matrix (200 fig.3) to provide connections between network devices, see fig.3, col. 4 lines 1-62]. It would have been obvious to one of the ordinary skill in the art at the time the invention was made to implement Dahod's matrix into the computer system of Bencheck to connect one or more internetworking devices because it would have combined different ones of user groups into Ethernet segments and provided unique switch matrix ports assigned to bridges, routers, sniffers or other internetwork connection devices and thus

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all collision domains can access these devices (see Dahod's col.3 lines 28-43 and col.4 lines 49-62).

As to claim 7, Bencheck's teachings still applied as in item 3 above. Bencheck does not specifically disclose using a controllable matrix to be controlled in conformance with an end-to-end connection. However, Dahod discloses a controllable matrix to be controlled in conformance with an end-to-end connection [a reconfigurable electronic switch matrix (200 fig.3) to provide connections between network devices, see fig.3, col. 4 lines 1-62]. It would have been obvious to one of the ordinary skill in the art at the time the invention was made to implement Dahod's matrix into the computer system of Bencheck to connect one or more internetworking devices because it would have combined different ones of user groups into Ethernet segments and provided unique switch matrix ports assigned to bridges, routers, sniffers or other internetwork connection devices and thus all collision domains can access these devices (see Dahod's col.3 lines 28-43 and col.4 lines 49-62).

As to claim 8, Bencheck's teachings still applied as in item 3 above. Bencheck further discloses a customer network management device (network element 152 fig.1). Bencheck does not specifically disclose using a controllable matrix to connect the network device. However, Dahod discloses a controllable matrix to connect the network device [using a reconfigurable electronic switch matrix (200 fig.3) to provide connections between network devices, see fig.3, col. 4 lines 1-62]. It would have been

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obvious to one of the ordinary skill in the art at the time the invention was made to implement Dahod's matrix into the computer system of Bencheck to connect one or more internetworking devices because it would have combined different ones of user groups into Ethernet segments and provided unique switch matrix ports assigned to bridges, routers, sniffers or other internetwork connection devices and thus all collision domains can access these devices (see Dahod's col.3 lines 28-43 and col.4 lines 49-62).

### ***Response to Arguments***

7. Applicant's arguments filed on 1/18/2005 have been fully considered but they are not persuasive.

- Applicant asserts that the cited reference does not disclose at least one network management device being controllable by the at least one service management device and at least one domain manager is linkable to the selected one service management device.

*Examiner respectfully disagrees. Bencheck discloses a network management system for identifying a root cause in the network and to ensure all the aspects of the network operating to both service provider's design and customer's expectations. In the particular case, Bencheck discloses a method for at least one network management device (151 fig.1) is assigned to each network of the plurality of networks (each network element is dedicated to a specified networks as: DS1, DS#, VT-n traffic, see col.4 line 56 to col.5 line 17) network and the at*

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*least network management device being controllable by the at least one service management device (141 fig.1) (using element manager to identify the root cause of network problems, see col. 5 lines 35-67) and at least one domain manager (131 fig.1) has access to a selected network management device (using network manager to provide services to network elements, see col.4 line 56 to col.5 line 17). This is equivalent to what is claimed. Therefore, the claim is properly rejected.*

- Applicant asserts that the combination of the references is improper.

*In response to applicant's argument that there is no proper suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to implement Dahod's matrix into the computer system of Bencheck to connect one or more internetworking devices because it would have combined different ones of user groups into Ethernet segments and provided unique switch matrix ports assigned to bridges, routers, sniffers or other internetwork connection devices and thus*



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*all collision domains can access these devices (see Dahod's col.3 lines 28-43 and col.4 lines 49-62).*

### **Conclusion**

8. Claims 5-8 are rejected.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khanh Dinh whose telephone number is (571) 272-3936. The examiner can normally be reached on Monday through Friday from 8:00 A.m. to 5:00 P.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung, can be reached on (571) 272-3939. The fax phone number for this group is (703) 872-9306.

*A shortened statutory period for reply is set to expire THREE months from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned (35 U. S. C. Sect 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(A).*

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval IPAIRI system. Status information for published applications may be obtained from either Private PMR or Public PMR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Khanh Dinh  
Patent Examiner  
Art Unit 2151  
4/13/2005

  
**ZARNI MAUNG**  
SUPERVISORY PATENT EXAMINER